

# Marshall's Plan: Prod the Living

## *Why He Released His Papers*

By Juan Williams

**T**HURGOOD MARSHALL knew what he was doing when he gave the Library of Congress permission to open his papers after his death. Marshall was totally in charge of his wits when he signed documents setting conditions to govern the library's handling of his papers, and in fact he had a vision about their historical impact.

Marshall's widow, Cecilia, and his friend and lawyer, William T. Coleman, are right not to be happy with the front-page stories and frenzy surrounding the documents discovered by newspapers last week. Still, they're committed to ensuring that the library abides by the conditions Marshall set forth when he donated the papers—that the release be posthumous and the library use its discretion about whom to release the documents to, and for what. Their concerns stem from the fact that Marshall carefully guarded his privacy and that of the court—and indeed would have hated the furor his papers have created. Nonetheless, he ultimately decided that releasing his papers was a critical means to further his long-term goals.

First, Marshall knew how to say no. Any of his acquaintances will tell you that he frequently turned down requests for speeches, interviews and particularly for documents, and did so with relish. In extensive interviews with me in 1989-90, he repeated his pledge to "burn" his papers when he left office; even then, he would often offer such a statement with a mischievous grin—he was playing the role of a cantankerous judge.

But even the suggestion that he would destroy his papers caused concern. Pressure began to mount from his clerks, his friends and family, as well as from writers and librarians, all of whom insisted that the judge not play games with his legacy. Marshall was pressed to take steps to ensure that his story, an integral part of American history, be preserved for future generations.

Yet Marshall voluntarily relinquished a large sum of money to a book publisher in 1988 rather than risk involvement in a project that he feared would violate the court's confidentiality and sensationalize its deliberations. That experience led Marshall to conclude that he wanted no part of any book project. For instance, after I wrote a Washington Post Magazine profile of him in 1990, we discussed my helping him to write his autobiography. Yet he quickly shelved the idea. Besides his previous run-in with publishers, said Marshall, he didn't want to do the work necessary, as he was feeling his age. And he definitely did not want to have to respond to people upset with his view of history or current events.

However, pressure continued to build for Marshall to assist in the documentation of his contributions. Shortly before his death, he agreed to a videotaped interview about his legal work with a former clerk, Yale University law professor Stephen Carter. And he decided to give his papers to the Library of Congress on the condition that they not be opened for research until after his death. This was a major concession by Marshall, and one taken after much deliberation. He explained his change of mind to me by saying he felt that sending the papers to the Library of Congress would achieve two ends: The posthumous release of the documents would serve contemporary writers while freeing him from having to respond to critics.

Yet Marshall's maneuver also served a larger vision that he held near to his heart. By allowing his papers to be viewed immediately after his death, he was continuing his role as the Supreme Court justice who would not let his colleagues forget about the impact of discrimination and poverty as they deliberated on the laws of this land. The release of his papers is another reminder to the justices left behind that people are watching. Less advan-

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BY DAVID MACLIVANE FOR THE WASHINGTON POST

tagged Americans, once represented by Marshall at the justices' conference table, may now learn about some of the arguments and considerations that shape the court's rulings. A similar mindset allowed Marshall to be content with mostly writing dissents in the later years of his tenure on the court—dissents that were intended to lay a groundwork for changes in the court's rulings that might come long after his death.

Chief Justice Rehnquist's current fit of anger—he threatened to deny the Library of Congress future donations of papers and accused the institution of "bad judgment"—is a tactic of intimidation. After all, the work of the court is based on the sanctity of the written word, through precedents, arguments and rulings. Unable to dictate to Marshall how his papers should be handled, he now tries to dictate to the Library of Congress. Is Rehnquist aware that, as Librarian of Congress James H. Billington notes, several other past and current justices (including Brennan, Burton, Goldberg, Douglas and White) have asked that all or part of their papers be made available immediately after, and in some cases even before, their deaths?

**M**arshall knew there were no sensational items in his papers, nor evidence of corruption or incompetence in the court. He did not guess that controversial newspaper stories would emerge from his papers, and in fact none have. The only news in the documents' release is that they have been made available so quickly. Marshall certainly did not intend to serve lawyers who now wish to find out which justices sank their losing cases. Nor did he want to assist those seeking to undermine the court's authority or cause discomfort to his friends still sitting on the bench.

But Thurgood Marshall ultimately felt an obligation to history. It is to his lasting honor that he ruled in favor of the people's right to know.